

In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 447 of 2002

Date of Decision: 8.11.2006

Capt. Amar Singh (Retd.)

...Petitioner

Versus

Union of India and another

...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

PRESENT: Mr. Angad Singh, Advocate,
for the petitioner.

Mr. Gurpreet Singh, Central Govt. Standing Counsel,
for the respondents.

JUDGMENT

M.M. KUMAR, J. (Oral)

The prayer made by the petitioner, who is an Ex-Captain, is for quashing order dated 13.8.1993 (P-2) to the extent that full pension as required to be given to the petitioner, has not been granted. A further request has been made for issuance of direction to the respondents to pay the petitioner disability pension with effect from 29.1.1992 by assessing the disability at 70% for life.

Brief facts of the case are that the petitioner was enrolled in the Army in the year 1935 and was granted Commission as an Officer in the year 1963. He was released from service on attaining the age of superannuation on 4.8.1974 and was granted disability pension on account of (a) Osteo Arthritis Lumbar Spine at 20%; and

(b) Chronic Eczema Right Feet at 20%. A total 40% composite disability pension was released to him for a period of two years. A Re-Survey Medical Board was held on 20.4.1976 at Military Hospital, Chandigarh, which assessed the disability for (a) Oesteo Arthritis Lumbar Spine as 20%; and (b) Chronic Eczema Right Feet at 20 to 14% . It is alleged that the CCDA (Pension) reduced the disability without assigning any reason and sanctioned composite disability pension for one year. The Re-Survey Medical Board was again held on 29.1.1977 at Military Hospital, Chandigarh, which assessed the disability for 10 years for (a) Oesteo Arthritis Lumbar Spine as 20%; and (b) Chronic Eczema Right Feet at 1 to 5% . The CCDA (Pension) sanctioned composite disability pension for 10 years by assessing the same at 20%. The petitioner had filed an appeal against the aforementioned decision. However, no decision given on appeal. The Re-Survey Medical Board was still again held on 26.9.1987 at Military Hospital, Chandigarh, which assessed the disability a) Oesteo Arthritis Lumbar Spine as 40%; and (b) Chronic Eczema Right Feet at 11 to 19%. The CCDA (Pension) sanctioned composite disability pension at 20% for life without assigning any reason. The petitioner had filed an appeal against the aforementioned decision. It was in 1992 that the petitioner was examined by a Special Board at Delhi, which assessed his disability on account of (a) Oesteo Arthritis Lumbar Spine as 20%; and for (b) Chronic Eczema Right Feet at 50%. The Union of India sanctioned the disability pension by accepting the composite disability at 70% for a

period of five years on the basis of the findings recorded by the Special Board.

On a Re-Survey Medical Board held at Military Hospital, Chandigarh, the composite disability of the petitioner was found to be 70% permanent on 29.4.1993. It is alleged that the CCDA (Pension) reduced the assessment to 40% for 5 years without assigning any reason. The petitioner filed an appeal, however, no decision on the appeal has been taken by the respondents. In the meanwhile, the CCDA (Pension) had opined that Medical Advisor (Pension) attached to his office had adjudicated upon the disability of the petitioner and assessed the same for five years. Again the Re-Survey Medical Board held on 10.3.1998 at Military Hospital, Chandigarh, had assessed the composite disability of the petitioner at 70% permanent, however, the CCDA (Pension) had sanctioned the disability pension at 40% composite disability. Again the petitioner had appealed against the aforementioned decision. The CCDA (Pension) has sent a reply to the petitioner stating that the Medical Advisor (Pension) attached to his office has adjudicated and assessed the disability at 40% composite (P-6).

In para Nos. 5, 6 and 7 of the written statement, the aforementioned factual position has not been denied. However, in reply to paras 9 to 16 the stand taken by the respondents is that the findings of Medical Board about the entitlement and assessment of percentage of disability are only recommendatory in nature which are subject to review/revision by the competent medical authority viz.

Medical Advisor (Pension)/JDAFMS (Pension) as defined in the Amended Rule 17-A of the Entitlement Rules to Casualty Pensionary Awards, 1982.

During the course of arguments, Mr. Gurpreet Singh, learned standing counsel for the respondents has placed on record a Fax communication received by him clearly specifying the opinion expressed by the Medical Advisor (Pension) resulting into reduction of percentage of disability and loss of pension to the petitioner. Photocopy of the aforementioned Fax communication, with the consent of the learned counsel for the petitioner, has been taken on record as Mark 'A'. He has stated that no reply to the faxed letter Mark 'A' would be necessary.

After hearing learned counsel for the parties, I am of the considered view that this petition deserves to be allowed. In the Fax communication it has been conceded that from January, 1992 to 29.4.1998, the composite disability assessed by the Re-Survey Medical Board is 70% which has been reduced by the CCDA (Pension) on the advice of the Medical Advisor (Pension) to 40%. It is well established that once the Medical Board has opined about the percentage of disability, the same cannot be tinkered with by an authority like CCDA (Pension) or Medical Advisor (Pension). The aforementioned view is supported by the judgments of Hon'ble the Supreme Court in the cases of **Ex. Sapper Mohinder Singh v. Union of India** (Civil Appeal No. 164 of 1993, decided on 14.1.1993) and **Union of India v. Dhir Singh Chana, Colonel (Retd.), (2003) 2**

SCC 382. Therefore, the first prayer of the petitioner with regard to payment of pension at the rate of 70% disability as assessed by the Medical Board deserves to be accepted. Accordingly, it has to be held that the petitioner is entitled to revised pension @ 70% on the basis of the assessment of his disability @ 70% from January, 1992 to 29.4.1998 and the order dated 13.8.1993 (P-2) is liable to be set aside. Similarly, in respect of the period from 30.4.1998 onwards the petitioner has been granted disability pension by assessing his disability at 40% despite the opinion expressed by the Re-Survey Medical Board that the composite disability is 50% for life as is evident from the faxed communication Mark 'A'. The aforementioned factual position is also clear from the Fax communication (Mark-A).

In view of above, the writ petition is allowed and the order dated 13.8.1993 (P-2) is set aside. A direction is issued to the respondents to release the disability pension of the petitioner by assessing his disability at the rate of 70% from January, 1992 to 29.4.1998 and at the rate of 50% from 30.4.1998 for life. The arrears shall be calculated within a period of three months from the date a certified copy of this order is received by the respondents. The petitioner shall also be entitled to interest at the rate of 9% per annum on the arrears from the date revised pension has become due till the date of its payment. The petitioner shall be entitled to costs of Rs. 5,000/-.

(M.M. KUMAR)

November 8, 2006

JUDGE

Pk Kapoor